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HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS QUESTIONS INCLUDING ALTERNATIVE APPROACHES FOR IMPROVING THE EFFECTIVE ENJOYMENT OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Strengthening of the rule of law

Report of the Secretary-General

I. INTRODUCTION

1. At its forty-ninth session, the General Assembly, in its resolution 49/194, recalling the recommendation of the World Conference on Human Rights, also recalling its own resolution 48/132 of 20 December 1993, and taking note of Commission on Human Rights resolution 1994/50 of 4 March 1994, welcomed the report of the Secretary-General (A/49/512), took note with interest of the proposals submitted in the report of the Secretary-General for strengthening the programme of advisory services and technical assistance of the Centre for Human Rights in order to comply fully with the recommendations of the World Conference concerning assistance to States in strengthening their institutions for the rule of law; expressed its deep concern at the scarcity of means at the disposal of the Centre for the fulfilment of its tasks; requested the Secretary-General to explore the possibilities of obtaining assistance from all relevant institutions of the United Nations system, including financial institutions, and submit a report to the General Assembly on the matter at its fiftieth session. Subsequently, the Commission on Human Rights, at its fifty-first session, in resolution 1995/54 of 3 March 1995, recalling General Assembly resolution 49/194, reiterated the concerns expressed by the Assembly and requested the Secretary-General to submit a report to the Assembly on means available within the United Nations system to strengthen the capacity of the Centre for Human Rights to provide assistance to States in strengthening the rule of law.

2. The report of the Secretary-General to the General Assembly at its forty-ninth session on strengthening of the rule of law (A/49/512), concluding that the programme of advisory services and technical assistance of the Centre for Human Rights was the most appropriate and well-suited mechanism for support to national efforts to strengthen the rule of law, contained five proposals for enhancing the capacity of the programme of advisory services and technical assistance of the Centre for Human Rights to comply fully with the recommendations of the World Conference on Human Rights concerning assistance to States in the strengthening of the rule of law. These were:

(a) Substantially increased project funding for the programme;

(b) An increase in staffing levels of the programme;

(c) The identification and securing of funds for financial assistance to States for strengthening the rule of law;

(d) Continued substantive programme development;

(e) Enhanced system-wide coordination through the High Commissioner for Human Rights.

3. Developments with regard to each of these proposals, along with additional recommendations, are provided below.

II. RESOURCE SHORTAGES

4. In his previous report the Secretary-General noted that, in spite of a dramatic increase in requests for assistance under the programme, the financial and human resources available for its implementation have remained inadequate. In 1995, this situation has continued, essentially unchanged. The lack of funds for financial and capital assistance to States which are committed to the strengthening of the rule of law but which face economic hardship has also continued.

5. Therefore, and as stated in the previous report of the Secretary-General, Member States must be encouraged to increase their contributions to the Voluntary Fund for Technical Cooperation in the Field of Human Rights. There must also be an increase in the number of posts and in the regular budget allocation for the advisory services programme if the programme is to respond effectively to the demands placed upon it by the World Conference on Human Rights, the General Assembly, the Commission on Human Rights and the Member States.

6. Efforts were initiated in 1995 to encourage the international community to support the programme, including through the appointment of a coordinator for the Voluntary Fund with extensive experience in technical cooperation, the organization of briefings for donor countries and non-governmental organizations on the programme, the introduction of a comprehensive programme of staff training in the management of the technical cooperation project cycle (jointly with the international training centre of the International Labour Organization

(ILO)), the adoption of new, standardized and transparent project guidelines (based upon the logical framework approach employed by United Nations development agencies), and the standardization of procedures and policies for project planning, monitoring and evaluation.

7. In addition, in response to the request contained in paragraph 6 of General Assembly resolution A/49/194, the High Commissioner for Human Rights, by a letter dated 28 August 1995 addressed to all relevant United Nations agencies and financial institutions, has sought to explore possibilities for obtaining from such institutions, acting within their mandates, technical and financial assistance for supporting the Organization's efforts to promote human rights and the rule of law.

8. While replies from the relevant agencies are still pending, and thus cannot be included in this report, the matter is being followed up closely as one element of a greater effort to enhance system-wide coordination, under the High Commissioner for Human Rights, towards assistance for the strengthening of the protection of human rights under the rule of law, as described in the following section.

III. ENHANCED COORDINATION THROUGH THE HIGH COMMISSIONER FOR HUMAN RIGHTS

9. By its resolution 48/141 of 20 December 1993, the General Assembly has entrusted the High Commissioner for Human Rights with, inter alia, providing, through the Centre for Human Rights and other appropriate institutions, advisory services and technical and financial assistance in the field of human rights; coordinating relevant United Nations education and public information programmes in the field of human rights; enhancing international cooperation for the promotion and protection of all human rights; coordinating human rights protection and promotion activities throughout the United Nations system; rationalizing, adapting, strengthening and streamlining United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness; and overall supervision of the Centre for Human Rights.

10. Thus, as indicated in the previous report of the Secretary-General, ultimate authority and responsibility for the coordination and implementation of this programme, as carried out through the Centre for Human Rights, rests with the High Commissioner, under the overall authority of the Secretary-General. As other actors in the United Nations system begin to undertake national assistance programmes in areas which touch upon human rights and the rule of law, it becomes increasingly important that due attention be given to the coordinating and substantive role of the High Commissioner and the Centre for Human Rights, in order to ensure that such activities will not be duplicative and that the substantive expertise of the Centre for Human Rights be fully incorporated into such programme activities.

11. To these ends, the expertise of the Centre and its capacities for technical cooperation, conducting needs assessments in the fields of human rights, democracy and the rule of law, and its related activities in support of the development of national plans of action should be taken into account in all

related activities of the Organization, including peace-keeping operations, electoral support and development programmes. The High Commissioner, with the assistance of the Centre, remains the focal point for coordinating system-wide attention for human rights, democracy and the rule of law and this role should be enhanced in order to ensure that all such activities are based upon the universal human rights standards which form the foundations of the Centre's work.

12. In recognition of this, the High Commissioner has initiated a series of consultations and contacts with other entities of the United Nations system, with a view to enhancing inter-agency coordination and cooperation in providing assistance for the strengthening of the rule of law. In addition to the High Commissioner's exploratory communications noted above, a number of additional measures have been initiated by the High Commissioner including meetings with executive heads of United Nations agencies and programmes on matters of policy and coordination; meetings and working-level contacts with agencies and programmes on thematic issues; field-level meetings in connection with various human rights field missions and projects; and the conclusion of memoranda of understanding with various agencies and programmes.

IV. CAPITAL AND TECHNICAL ASSISTANCE FUNDS

13. As noted above and in the previous report of the Secretary-General, the limited amount of funding available under the programme is insufficient even for meeting the needs of requesting Governments for technical cooperation activities in the field of human rights. As such, the programme has been unable to provide any substantial financial assistance to meet capital assistance needs which have a direct impact on the realization of human rights and the maintenance of the rule of law in countries which are committed to these ends but which face economic hardship due to economic problems, crisis or transition.

14. Traditionally, many individual donor countries have been hesitant to make direct contributions to countries seeking to improve the physical conditions of prisons, to equip police with means for the non-lethal and differentiated use of force, to renovate and equip courtrooms, or to contribute to start-up costs for new national human rights institutions. Nevertheless, financial and material assistance for these needs remain as important as technical assistance if Governments are to be successful in their efforts to ensure the protection of human rights under the rule of law. While, for example, the value of training prison guards in human rights standards and techniques and providing expert assistance in the drafting of humane prison regulations remain clear priorities of the programme, such inputs lose substantial potential for positive impact if the guards, however well trained, and the regulations, however humane, are set in the context of substandard facilities and inhumane physical conditions.

15. Thus, in order to meet the concerns of the General Assembly, which has specifically stated in its resolutions on the subject that the programme should be able to provide both technical and capital assistance to Governments, additional funding would be required to address capital assistance needs for human rights and the rule of law, such as financial and material support for the physical improvement of prisons; for start-up costs, equipment and materials for

new institutions or the strengthening of existing ones, including judiciaries, human rights commissions and ombudsmen's offices; for equipping and strengthening law schools; for the development of independent mass media; for staffing and equipping democratically elected parliaments; for legal resources; and for any other institutions necessary for the good functioning of the rule of law.

16. Accordingly, consideration should be given to ways and means for capital support to be made available to States as a complement to the Centre's technical cooperation programme. Such support might be facilitated by, inter alia, the substantial supplementing of the Voluntary Fund for Technical Cooperation in the Field of Human Rights; the establishment of a separate, complementary fund for capital assistance in the field of human rights; or encouraging increased support from development agencies and funds and financial institutions for financial and capital assistance for human rights and the rule of law. Such issues will be explored further in the High Commissioner's ongoing consultations with his partners in the United Nations system.

V. PROGRAMME DEVELOPMENT

17. As the repository within the United Nations system for cumulative institutional expertise in human rights and the elements of the rule of law from the international perspective, the Centre for Human Rights plays a vital and central role in the development of United Nations efforts aimed at the strengthening of the rule of law in Member States. In addition to the provision of human rights technical cooperation to Member States in cooperation with other United Nations agencies and programmes, the Centre is also involved in the dissemination of information essential to strengthening the rule of law through the development and publication of printed technical cooperation tools such as manuals, handbooks and model programmes.

18. The programme has endeavoured, within available resources, to develop the substance and methodology of each of its components in order to respond more effectively to the needs of requesting States as well as of the Centre's partners in the United Nations system. Accordingly, the Centre has carried out careful and sustained programme development activities in support of a number of components, including police training, electoral assistance, national institution support, training for the military, and a number of others. Programme development meetings have been convened in Geneva with expert representation from each of the world's regions, and manuals and handbooks have been prepared in six programme areas. Materials on human rights and elections, on human rights and social work, on human rights and pre-trial detention, on human rights reporting obligations under international instruments, and on national human rights institutions have already been published and the Centre has completed preparation of a manual on human rights and law enforcement. Additional manuals currently under preparation include human rights and the military, human rights in prisons, human rights teaching in primary and secondary schools, human rights in the administration of justice (for judges and lawyers), human rights and national NGOs, and human rights monitoring.

19. As the Centre continues, in response to successive Commission on Human Rights resolutions, to take measures to ensure that projects implemented under the programme are well prepared, additional and dedicated resources should be made available to support further programme development activities so that plans for the development of the remaining components of the programme may be implemented. Such programme development activities allow the Centre to improve the quality of its own assistance projects, while at the same time providing an opportunity to disseminate more widely the substance of the Centre's programmes, for example manuals and handbooks. In addition, it should be noted that the development of such materials increases the resource efficiency of the programme by obviating the need for the ad hoc production of materials with each successive project. Furthermore, these programme development activities, and the materials which result from them, provide an objective and publicly accessible record of the unbiased and universal content of the Centre's assistance activities, which has the effect of increasing confidence in the programme while maximizing its utility and providing a means for its crucial and continuous improvement.

VI. CONCLUSIONS

20. The High Commissioner for Human Rights, with the assistance of the Centre for Human Rights, remains the focal point for United Nations efforts to assist States in the strengthening of the rule of law. Enhancing system-wide efforts to this end will require the sustained commitment of all relevant actors towards increased cooperation under the guidance of the High Commissioner, increased resources for both technical and capital assistance, and continued substantive programme development.

21. The extent to which the international community responds to the imperatives described in this report will largely determine the future success of United Nations efforts to strengthen the protection of human rights under the rule of law. The importance of such efforts has been nowhere more clearly stated than in the Universal Declaration of Human Rights itself which, in 1948, proclaimed:

> "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law".